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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

DEC 18 2014

BOB STUMP - Chairman
 GARY PIERCE
 BRENDA BURNS
 BOB BURNS
 SUSAN BITTER SMITH

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
 THE TOWN OF GILBERT TO UPGRADE
 EXISTING CROSSINGS OF THE UNION
 PACIFIC RAILROAD COMPANY AT COOPER
 ROAD, AAR/DOT NO. 741-816D, AND AT
 GUADALUPE ROAD, AAR/DOT NO. 741-815W,
 IN THE TOWN OF GILBERT, MARICOPA
 COUNTY, ARIZONA.

DOCKET NO. RR-03639A-14-0157

DECISION NO. 74852OPINION AND ORDER

DATES OF HEARING:

August 26, 2014 (Public Comment) and October 2, 2014
 (Evidentiary Hearing)

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Scott M. Hesla

APPEARANCES:

Mr. Jack Vincent, Assistant Town Attorney, on behalf
 of the Town of Gilbert;

Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll &
 Schwartz, P.C., on behalf of the Union Pacific Railroad
 Company; and

Ms. Bridget Humphrey and Mr. Charles Hains, Staff
 Attorneys, Legal Division on behalf of the Safety
 Division of the Arizona Corporation Commission

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
 Commission finds, concludes, and orders that:

FINDINGS OF FACTProcedural History

1. On May 12, 2014, the Town of Gilbert ("Town") filed with the Arizona Corporation
 Commission ("Commission") an application for approval for Union Pacific Railroad Company

1 ("Railroad") to upgrade the following existing crossings located at the Railroad's tracks in Gilbert,
2 Arizona: at Cooper Road, AAR/DOT NO. 741-816D; and at Guadalupe Road, AAR/DOT NO. 741-
3 815W ("Application").¹

4 2. On May 28, 2014, a Procedural Order was issued scheduling a hearing on August 26,
5 2014 and setting various filing dates.

6 3. On July 16, 2014, Jack A. Vincent, Assistant Town Attorney, filed a Notice of
7 Appearance on behalf of the Town.

8 4. On July 24, 2014, the Town filed an affidavit of publication verifying that notice of
9 the Application and hearing thereon was published in the *Arizona Business Gazette* on June 9, 2014.²
10 The Town also filed copies of U.S. Postal Service Certified Mail Receipts confirming that copies of
11 the Application and the May 28, 2014 Procedural Order were mailed to surrounding adjacent
12 property owners via certified mail.³

13 5. On August 8, 2014, the Commission's Safety Division, Railroad Safety Section
14 ("Staff") filed a Staff Memorandum recommending approval of the Application.⁴

15 6. On August 13, 2014, the Railroad filed a Joint Request to Continue the Evidentiary
16 Hearing Scheduled for August 26, 2014 requesting that the hearing be continued due to a scheduling
17 conflict with the Railroad's witness.

18 7. On August 15, 2014, a Procedural Order was issued granting the Joint Request to
19 Continue the Evidentiary Hearing and rescheduling the hearing for October 2, 2014. Since public
20 notice of the hearing had been published, the August 26, 2014 hearing date was preserved solely for
21 the purpose of taking public comment.

22 8. On August 26, 2014, a public comment session was convened, as scheduled, with one
23 member of the public providing public comment. The public commenter opposed the Town's plan to
24 widen Guadalupe Road because doing so would infringe upon his property.⁵

25 ...

26 ¹ Exhibit A-1.

27 ² Exhibit A-5.

³ *Id.*; Hearing Transcript (October 2, 2014) ("Hrg. Tr.") at 39:7-40:6.

⁴ Exhibit S-1.

28 ⁵ Public Comment Transcript (August 26, 2014) ("Pub. Tr.") at 13:3-9.

9. On October 2, 2014, a full public hearing was convened, as scheduled. The Town, the Railroad, and Staff appeared through counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

The Town's Application

10. Prior to the filing of the Application, representatives from the Town, the Railroad, and Staff participated in a diagnostic review meeting of the proposed crossing upgrades at Cooper Road and Guadalupe Road.⁶ All parties who were present at this meeting were in agreement that the proposed enhancements would improve safety at the crossings.⁷

11. The Railroad's tracks run in a southeast to northwest direction near the intersection of Cooper Road and Guadalupe Road.⁸ Cooper Road is a five lane paved roadway which consists of two northbound through lanes, two southbound through lanes, and one left turn lane at the intersection.⁹ Guadalupe Road is a five lane paved roadway which consists of two eastbound through lanes, two westbound through lanes, and one left turn lane at the intersection.¹⁰ The rail line crosses Cooper Road to the south of the intersection and Guadalupe Road to the west of the intersection.¹¹

12. The proposed improvements at the Cooper Road crossing will replace the existing flashing lights and gates with two new automatic gates and cantilevers with LED flashing lights on the outside curbs of Cooper Road and two new automatic gates with LED flashing lights which will be located within a new raised median.¹² Constant warning time with advanced preemption circuitry and a new concrete crossing surface will also be installed.¹³ In addition, the Town will widen Cooper Road by one additional through lane in each direction, install the raised median, improve pedestrian crossings, and restripe the roadway and install new signage in advance of the crossing.

13. The proposed improvements at the Guadalupe Road crossing will replace the existing flashing lights and gates with two new automatic gates and cantilevers with LED flashing lights on

⁶ Exhibit S-1.

⁷ *Id.*

⁸ Exhibit A-1.

⁹ Hrg. Tr. at 26:17-25.

¹⁰ *Id.* at 25:18-26:3.

¹¹ Exhibit A-1.

¹² *Id.*

¹³ *Id.*

1 the outside curbs of Guadalupe Road and two new automatic gates with LED flashing lights which
 2 will be located within a new raised median.¹⁴ Constant warning time with advanced preemption
 3 circuitry and a new concrete crossing surface will also be installed.¹⁵ In addition, the Town will
 4 widen Guadalupe Road by one additional through lane in each direction, install the raised median,
 5 improve pedestrian crossings, and restripe the roadway and install new signage in advance of the
 6 crossing.¹⁶

7 14. Mr. Frank Henderson, Vice President and Senior Project Manager for Ritock-Powell
 8 & Associates, testified that he prepared the Application on behalf of the Town.¹⁷ According to Mr.
 9 Henderson, the existing configuration of the intersection fails from an operational standpoint because
 10 it experiences significant traffic congestion and queues during peak traffic hours.¹⁸ In addition, Mr.
 11 Henderson testified that queuing vehicles are often trapped between the intersection and the railroad
 12 crossings because the existing traffic signals do not interface with the existing railroad crossing
 13 signals.¹⁹ Mr. Henderson indicated that installing advanced preemption circuitry will connect traffic
 14 signals with the railroad crossing signals and prevent the trapping of vehicles during train crossings.²⁰
 15 According to Mr. Henderson, the proposed upgrades will improve the operational characteristics and
 16 capacity of the intersection and result in a significant safety improvement at the crossings.²¹

17 15. The American Association of State Highway and Transportation Officials
 18 ("AASHTO") Geometric Design of Highways and Streets states that the Level of Service ("LOS")
 19 characterizes the operating conditions on a roadway in terms of traffic performance measures related
 20 to speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience.²²
 21 Staff notes that LOS is a measure of roadway congestion ranging from LOS A (least congested) to
 22 LOS F (most congested).²³ According to Staff, LOS is one of the most common terms used to

24 ¹⁴ Exhibit A-1.

25 ¹⁵ *Id.*

26 ¹⁶ *Id.*

27 ¹⁷ Hrg. Tr. at 10:20-11:2.

28 ¹⁸ *Id.* at 11:17-12:3; 18:12-19:10.

¹⁹ *Id.* at 11:17-12:3; 20:3-21:4.

²⁰ *Id.* at 21:5-25.

²¹ *Id.* at 19:5-10; 20:11-22:20; Exhibit A-1.

²² Exhibit S-1.

²³ *Id.*

1 describe how “good” or how “bad” traffic is projected to be.²⁴

2 16. Erik Guderian, Traffic Engineer for the Town of Gilbert, testified that the current LOS
3 for the intersection is LOS D during morning peak traffic hours and LOS E during afternoon peak
4 traffic hours.²⁵ Mr. Guderian further testified that the Town engaged the services of a traffic
5 engineering consultant to perform a traffic study at the intersection.²⁶ According to the traffic study,
6 the present intersection configuration is inadequate to serve current and future traffic volumes.²⁷ By
7 the year 2031, the traffic study projects the LOS for the intersection to worsen under its current
8 configuration to LOS E during morning peak traffic hours and LOS F during afternoon peak traffic
9 hours.²⁸ Mr. Guderian testified that traffic congestion and related safety concerns are the driving
10 factors behind the Town’s decision to widen the existing roadways.²⁹

11 17. Mr. Jack Gierak, Senior Project Manager in the Engineering Department for Gilbert
12 Capital Improvement Group, testified that the proposed project will require the relocation of utility
13 assets owned by Salt River Project (“SRP”).³⁰ According to Mr. Gierak, the SRP relocation phase
14 will take approximately three to fourth months to complete³¹ and will coincide with SRP’s annual
15 irrigation dry-up process which begins every December.³² Once the SRP relocation phase is
16 completed, Mr. Gierak testified that the proposed project will be completed within thirteen months.³³

17 18. Mr. Henderson testified that grade separation is not feasible for these crossings due to
18 the adverse impact to adjoining landowners and inadequate site distance requirements.³⁴ In addition,
19 the crossings do not meet any of the nine criteria utilized by Federal Highway Administration
20 (“FHWA”) for consideration of grade separation.³⁵

21 ...

22 ²⁴ *Id.*

23 ²⁵ Hrg. Tr. at 35:16-22.

24 ²⁶ *Id.* at 34:1-24.

25 ²⁷ Exhibit A-6.

26 ²⁸ Hrg. Tr. at 35:16-36:9.

27 ²⁹ *Id.* 36:13-24.

28 ³⁰ Hrg. Tr. at 41:9-21.

³¹ *Id.* at 46:7-19. Mr. Gierak expressed uncertainty as to whether the SRP relocation phase will coincide with SRP’s dry-up process in December of 2014 or December of 2015. (*Id.*).

³² *Id.* at 43:2-12.

³³ *Id.* at 46:20-25.

³⁴ *Id.* at 23:14-24:25:2.

³⁵ Exhibit S-1.

19. Testifying further, Mr. Henderson indicated that the cost for the proposed railroad crossing upgrades is approximately \$2 million and will be funded through Proposition 400, Maricopa Association of Governments ("MAG") monies.³⁶

Staff's Recommendations

20. Mr. Brian Lehman, Supervisor of Railroad Safety for the Commission, testified that he prepared the Staff Memorandum which describes the nature of the Town's proposed improvements.³⁷

21. Mr. Lehman testified that the Commission's jurisdiction in this matter is limited to the crossings and the proposed warning and safety device upgrades.³⁸ Mr. Lehman noted that the Commission does not have jurisdiction over the intersection of Cooper Road and Guadalupe Road or the roadways themselves.³⁹ According to Mr. Lehman, the relevant inquiry for Staff in performing its analysis is whether the proposed railroad upgrades will result in a safer crossing.⁴⁰ Mr. Lehman testified that Staff believes the proposed railroad upgrades will result in safer crossings.⁴¹ Mr. Lehman further testified that Staff was not concerned with the number of traffic lanes on the roadways because it believes the installation of advanced preemption circuitry will alleviate the safety issue of vehicles queuing on the Railroad's tracks.⁴²

22. Mr. Lehman indicated that he was aware of four accidents at the Guadalupe Road crossing caused by vehicles queuing on the Railroad's tracks.⁴³ According to Mr. Lehman, the nature of these accidents demonstrates the need for the advanced preemption circuitry at the crossing.⁴⁴ Mr. Lehman testified that the proposed improvements at these crossings will alleviate accidents of this nature from occurring in the future.⁴⁵

...

...

³⁶ Hrg. Tr. at 27:1-17; Exhibit S-1.

³⁷ *Id.* at 48:7-12.

³⁸ *Id.* at 49:16-50:16.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 52:13-53:2. In addition, Mr. Guderian testified that the intersection consistently ranks in the top ten for the number of annual accidents in the Town of Gilbert. (*Id.* at 36:19-24).

⁴⁴ *Id.*

⁴⁵ *Id.*

1 23. Mr. Lehman further testified that the proposed safety measures at both crossings are
2 consistent with similar crossings located throughout Arizona.⁴⁶

3 24. According to Mr. Lehman, the proposed improvements at both crossings will improve
4 public safety and are in the public interest.⁴⁷

5 25. Staff recommends that the Application be approved.⁴⁸

6 26. Staff's recommendations are reasonable and appropriate and should be adopted.

7 **CONCLUSIONS OF LAW**

8 1. The Commission has jurisdiction over the parties and over the subject matter of the
9 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
10 40-337.01.

11 2. Notice of the Application was provided in accordance with the law.

12 3. The installation of the crossing upgrades described in the Application is necessary for
13 the public's convenience and safety.

14 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
15 recommended by Staff.

16 5. After the installation of the improvements at the Cooper Road and Guadalupe Road
17 crossings, the Union Pacific Railroad Company should maintain the crossings in accordance with
18 A.A.C. R14-5-104.

19 **ORDER**

20 IT IS THEREFORE ORDERED that the Town of Gilbert's Application is hereby approved.

21 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the
22 upgrades to the Cooper Road and Guadalupe Road crossings, as described in the Application, within
23 thirty six months of the effective date of this Decision.

24 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
25 Commission, in writing, within ten days of both the commencement and completion of the upgrades
26 to the Cooper Road and Guadalupe Road crossings, pursuant to A.A.C. R14-5-104.

27 ⁴⁶ *Id.* at 51:15-19.

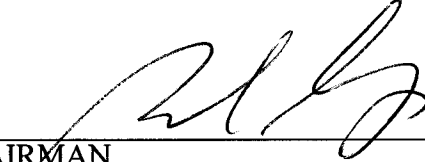
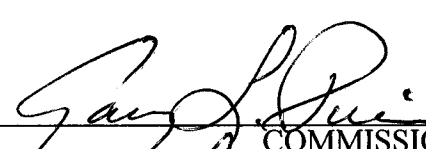


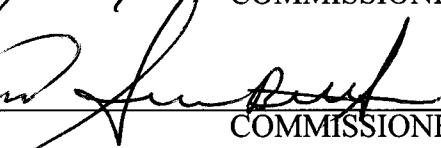
28 ⁴⁷ *Id.* at 51:20-23; 53:8-10.

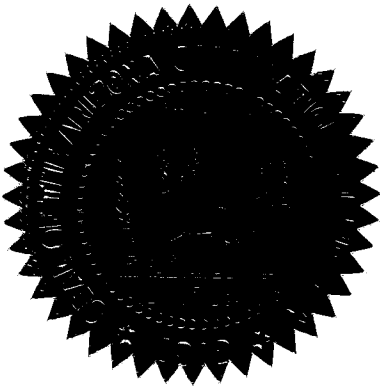
⁴⁸ *Id.* at 51:24-52:1.

IT IS FURTHER ORDERED that upon completion of the upgrades to the Cooper Road and Guadalupe Road crossings, the Union Pacific Railroad Company shall maintain the crossings in compliance with A.A.C. R14-5-104.

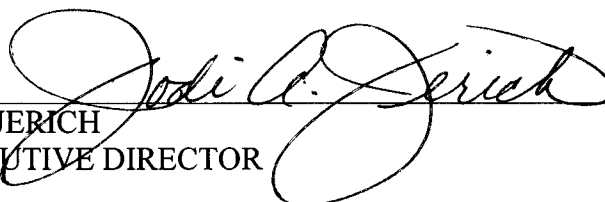
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER
	 COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 18th day of December 2014.


 JODI JERICH
 EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
 SMH:ru

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